

## **REMARKS/ARGUMENTS**

### **Status Of The Claims**

This is an Amendment and Reply to the Office Action mailed October 4, 2007, in which the following rejections were set forth: Claims 3 and 9 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention; Claims 1-4, 7-10, 13, and 14 were rejected under 35 U.S.C. § 102 as being anticipated by European Patent No. 0568822A2, issued to Ishimaru ("*Ishimaru*"); and, Claims 5, 6, 11, and 12 were rejected under 35 U.S.C. § 103 as being unpatentable over *Ishimaru* in view of U.S. Patent No. 6,983,521, issued Thompson ("*Thompson*").

By this response, Claims 3 and 9 have been amended, Claims 15-18 have been added, and no claims have been canceled. As such, Claims 1-18 are pending in this application.

### **§ 112 Claim Rejections**

Applicant has amended Claims 3 and 9 to more particularly point out and distinctly claim the subject matter that Applicant regards as the invention. As such, Claims 3 and 9 are respectfully submitted to be in condition for allowance and the Applicant requests that the rejection of Claims 3 and 9 be withdrawn.

### **§ 102(a) Claim Rejections**

#### *Ishimaru*

Claims 1-4, 7-10, 13, and 14 stand rejected as being anticipated by *Ishimaru*, wherein it is alleged that *Ishimaru* discloses each and every element of Applicant's claimed invention.

*Ishimaru* discloses an energy supply system, not a system for drying objects as proposed by the Applicant. The Examiner holds that element 19 is a dryer, however *Ishimaru* teaches this element 19 to be a "waste heat collector," where "heat is collected in the form of warm water and/or vapor." See col. 10, line 10 ff. In addition, *Ishimaru* uses fuel cells of the phosphate type—see col. 14, line 52—which type is not a high temperature fuel cell. Solid electrolyte type and fused carbonate type fuel cells are mentioned in col. 6, line 33 ff., which however have not been put into practice yet; and *Ishimaru* provides no disclosure that high temperature fuel cells will work in a system as claimed. Moreover, there is no disclosure within *Ishimaru* to feed process waste air of the fuel cell directly to a drying cubicle as is claimed in the present

invention, i.e., “the heating device includes at least one high temperature fuel cell the process waste air from which can be fed to the drying cubicle as hot air.”

In short, *Ishimaru* uses a control device, where “the control device controls the in-system power generating device to operate in the optimal condition with respect to the costs born by the energy consumer, consumption of primary energy and release of environmental pollutants.” See column 2, line 53 ff. The control device minimizes the equation  $y = a \times L \div b \times M + c \times N$ . *Ishimaru* therefore teaches an algorithm for minimizing the overall costs of the energy supply system including energy costs and environmental costs. This is quite different from the approach of the present invention, which requires operation of “the high temperature fuel cell regardless of the electrical energy generated thereby that the thermal energy generated thereby meets the requirement in the drying cubicle and supplies whatever quantity of electrical energy is generated by the high temperature fuel cell to other electrical consumers.”

For at least the above reasons, *Ishimaru* fails to disclose each and every element of Applicant’s invention as claimed in Claims 1 and 7. *Ishimaru* further fails to suggest each and every element of Applicant’s Claims 1 and 7. As such, Claims 1 and 7 are neither anticipated nor rendered obvious by *Ishimaru*.

Applicant therefore respectfully requests that the rejection of Claims 1 and 7 be removed and further submits that Claims 1 and 7—as well as Claims 2-6 and 8-18 by virtue of their respective ultimate dependence there from—be allowed to issue.

#### § 103(a) Claim Rejections

*Thompson* in view of *Ishimaru*

Applicant respectfully submits that the Examiner has failed to point to a teaching within the cited art that supports combination or modification resulting in Applicant’s claimed invention; and as such, a *prima facie* case of obviousness has not been made.

The test for obviousness is not “obvious to try,” but rather, whether the claimed invention as a whole, in light of all the teachings of the references in their entireties, would have been obvious to one of ordinary skill in the art at the time the invention was made. See *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1549 (Fed Cir. 1983). When the prior art fails to suggest the claimed invention, any reconstruction of the prior art to obtain the invention necessarily and inevitably requires impermissible hindsight. If selective combination of the prior art references is required to render the invention obvious, there must be some reason for the combination other

than hindsight gleaned from the invention itself. That is, there must be something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination. It is well establish that focusing on individual elements of the claimed invention, rather than on the invention as a whole, is not the proper test.

Nonetheless, even if it were properly permissible to combine *Ishimaru* with *Thompson*, their combination still fails to disclose each and every element of Applicant's independent claims. That is, *Thompson* does not involve fuel cells, but rather discloses a process for using waste heat from a combustion chamber 12 in a dryer 14, where wet material is to be dried. Arguably *Thompson* may disclose some of the elements of Applicant's independent claims, it however fails to compensate for the shortcomings of *Ishimaru* to disclose each and every element of Applicant's independent Claims 1 and 7.

Up until the present invention, fuel cells have been primarily used for producing electrical power. Heating energy produced in parallel by the fuel cells has been considered a side effect of this process, and, as is done by *Ishimaru*, has been used in some storage systems of heat energy. The present invention however, teaches a fundamental change in philosophy. Namely, the primary intention of the present invention is to produce heat energy just sufficient to heat up the drying cubicle, wherein the control system involved operates in such way as to ensure that the heat demand of the drying cubicle is met—the electrical power generated at the same time by the fuels cell now being taken as a side effect of the primary function. In other words, the present invention discovers that high temperature fuel cells are able to meet the demands of such a system.

Because the cited prior art, alone or in combination, fails to disclose, teach, or suggest each and every element of Applicant's independent Claims 1 and 7—as well as respective dependent claims 2-6 and 8-18—Applicant respectfully submits that Claims 1-18 are in condition for allowance and request the rejections to the claims be withdrawn.

#### New Claims

Claims 15-18 ultimately depend on respective independent Claims 1 and 7, which are asserted to now be in condition for allowance. Therefore, for at least the same reasons that Claims 1 and 7 are believed to be allowable, dependent Claims 15-18 are also asserted to be allowable.

Appl. No. 10/576,986

Amdt. dated January 4, 2008

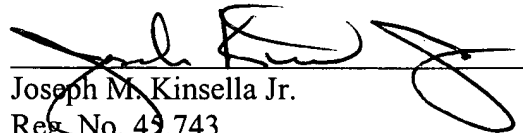
Reply to Office Action of October 4, 2007

### CONCLUSION

In view of the above remarks, Applicant respectfully requests that all rejections be removed and all pending claims be passed to issue. If any fees are required with this communication, Applicant authorizes the Commissioner to deduct such fees from Deposit Account No. 50-0545.

Respectfully Submitted,

Dated: January 4, 2008

  
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#### **CERTIFICATE OF FIRST CLASS MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop - Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on January 4, 2008.

  
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